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GOTTLIEB v. COMMONWEALTH.

Jan. 22, 1920.

[101 S. E. 872.]

1. Statutes (§ 199*)—Meaning of Word “Knowingly.”—The word “knowingly,” within statutes making it a crime to “knowingly” commit certain acts, usually means a perception of the facts requisite to constitute the crime.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Knowingly. For other cases, see 4 Va.-W. Va. Enc. Dig. 14.]

2. Infants (§ 13*)—Knowledge That Child Is under 18 Years of Age an Essential Element of Crime of Causing Child under Such Age to Commit a Misdemeanor.—In prosecution for causing or encouraging a child under the age of 18 years to commit a misdemeanor, in violation of Acts 1914, c. 228, and Code 1919, § 1923, the knowledge of accused that the child was under 18 years of age is an essential element of the crime.

3. Criminal Law (§ 13*)—Court Cannot Create Crime Not Imported by Language of Statute.—Where Legislature has defined the offense, the courts cannot by construction create a crime which the language of the act does not import.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 11.]

4. Criminal Law (§ 561 (1)*)—Proof of Every Essential Element beyond a Reasonable Doubt Essential.—The commonwealth must prove every essential element of the crime charged to the satisfaction of the jury beyond a reasonable doubt.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 90.]

5. Criminal Law (§ 1159 (5)*)—Appellate Court’s Duty under the Statutory Demurrer to the Evidence Rule Stated.—Under the statutory demurrer to the evidence rule, the court will not set aside verdict for failure of commonwealth to prove an essential element of crime, if any evidence has been introduced from which jury could have found that proof of such element existed.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 546.]

6. Criminal Law (§ 757 (1)*)—Instruction as to Consideration of Evidence Objectionable as on Weight of Evidence.—In prosecution for permitting girl under 18 years of age to remain in defendant’s boarding house for and to permit her to commit immoral acts, instruction that testimony of the female prosecuting witness should be cautiously scrutinized, that jury should guard itself from any influence of sympathy in her behalf, that the charge was easily made and hard to prove, and harder to be defended by the accused,

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

though innocent, and that great caution should be observed in weighing and considering the evidence, held objectionable as on weight of evidence, and as argumentative, rhetorical, and redundant.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716, 718, 730.]

7. Criminal Law (§ 731, 741 (1)*)—Questions of Law for Court and Questions of Fact for Jury.—It is fundamental that the court must respond to questions of law, and the jury to questions of fact, the court deciding on the admissibility of evidence, that being a question of law, but not as to its weight after it is admitted, that being a question of fact.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 72, 73.]

8. Criminal Law (§ 807 (1)*)—Argumentative, Rhetorical, and Redundant Instructions Improper.—Instructions that are argumentative, rhetorical, and redundant are improper.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716, 718, 730.]

9. Criminal Law (§ 805 (1)*)—Elements of Model Instruction Stated.—The model instruction is a simple, impartial, clear, concise statement of the law applicable to the evidence in the case on trial.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 716.]

1. Infants (§ 20*)—Evidence as to Statements by Infant in Prosecution for Causing Infant to Commit Misdemeanor Admissible to Disprove Charge of Conspiracy.—In prosecution for causing a child under 18 years of age to commit a misdemeanor in violation of Code 1919, § 1923, by encouraging her to be guilty of immoral conduct, evidence by police officers as to statements made by prosecutrix when taken from defendant would generally be inadmissible, but where accused himself testified that the whole case was a conspiracy against him by the police, and that they had invented the story prosecutrix had told, court properly permitted the commonwealth to introduce such evidence in rebuttal to disprove such conspiracy, but should not have permitted police to have testified as to the details of statements.

Error to Corporation Court of Norfolk.

Leo N. Gottlieb was convicted of causing or encouraging a child under the age of 18 years to commit a misdemeanor, and he brings error. Reversed.

N. T. Green and Tazewell Taylor, both of Norfolk, for plaintiff in error.

The Attorney General, for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.